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16 UNITED STATES BANKRUPTCY COURT
17
18 NORTHERN DISTRICT OF CALIFORNIA
19
20 SAN FRANCISCO DIVISION

21 In re:
22 PG&E CORPORATION,
23
24 - and -
25
26 PACIFIC GAS AND ELECTRIC
27 COMPANY,
28
29 Debtors.

Bankruptcy Case No. 19-30088 (DM)
Chapter 11
(Lead Case)
(Jointly Administered)
**JOINDER OF CERTAIN FIRE VICTIMS
IN WILLIAM B. ABRAMS MOTION TO
DESIGNATE IMPROPERLY SOLICITED
VOTES PURSUANT TO 11 U.S.C. §§
1125(B) AND 1126(E) AND BANKRUPTCY
RULE 2019**

I

INTRODUCTION

This Joinder is submitted by a substantial group of fire victims who suffered injuries and were damaged by the PG&E fires in Sonoma, Napa, Mendocino and Butte Counties both for themselves and as advocates for all fire victims injured by the 2015, 2017, and 2018 Northern

1 California wildfires who are considering the settlement offer by PG&E.

2 II

3 THE PG&E SETTLEMENT IS NOT GOOD FOR FIRE VICTIMS

4 The settlement proposed by PG&E, which was then negotiated by the Tort Claimants
5 Committee (“TCC”), allegedly as intended to pay fire victims \$13.5 billion in consideration. The
6 terms of that settlement are contained in a Restructuring Support Agreement (“RSA”) purportedly
7 entered into on or about December 5, 2019, which provides for the \$13.5 billion to be paid one-
8 half in cash and one-half in post-bankruptcy PG&E common stock. Pursuant to the RSA, the
9 cash portion is to be paid into a new “Fire Victims’ Trust Account” (the “Trust”) in three
10 installments -- \$5.4 billion on August 29, 2020; \$650 million by January 15, 2021 and \$700
11 million by January 15, 2022. The later two payments bear no interest and have questionable
12 security.¹ The stock portion likewise would be paid on August 29, 2020 into the Trust, and then
13 sold over a period of time. At the time the the TCC signed the RSA with PG&E, the real value of
14 the \$13.5 billion was less than that amount and has further decreased as the economy declined,
15 and financial markets have been disrupted. It is now time to expose this settlement for what it is
16 – a terrible deal for the fire victims.

17 We agree with the TCC that PG&E has breached the RSA by making material changes to
18 that document, to which changes the TCC did not agree. As the charts below show, the agreed-
19 upon value of \$6.75 billion in PG&E stock does not have that value, so the fire victims are not
20 getting a total of \$13.5 billion as promised. See, Declaration of Eric Lowrey, CIRA, In Support
21 of Objection by Certain Fire Victims to Debtors’ Motion Pursuant to 11 U.S.C. 105(A) and
22 502(C) to Establish Amount of Fire Victim Claims for all Purposes of the Chapter 11, I re PG&E
23 Corporation, Civil Case No. 19-05257 (JD), Doc. No. 307 (04/03/20), a copy of which is attached
24 hereto as Exhibit A.

25 PG&E unilaterally amended its capitalization by reducing equity by \$3 billion and
26 increasing its debt-load by more than \$3.7 billion than was agreed to with the TCC, thereby

27 ¹ The security hinges on a successful IRS ruling that net operating losses (“NOLs”) will not be
28 lost if the amount of stock transferred upon exit from bankruptcy creates a change in ownership,
which usually places the NOL in jeopardy. - 2 -
MOTION

1 lowering the value of the stock. Neither the TCC nor any of the fire victims agreed to that
2 increase in debt.

3 Moreover, because of the recent dramatic downturn in the economy due to coronavirus,
4 the value of any post-petition PG&E stock will be greatly reduced.

5 Thus, it is obvious that the value of the consideration to be transferred to the Trust is
6 substantially less than the promised \$13.5 billion, and current economic conditions puts the value
7 and timing of that consideration at risk of further reduction and threatens to delay payment of the
8 cash portion of the settlement consideration. Forty percent of the cash portion of the
9 consideration – *i.e.*, \$5.4 billion – would be paid when PG&E exits bankruptcy which is supposed
10 to be by August 29, 2020. However, that effective date is problematical due to the Contingency
11 Plan added to the Plan of Reorganization as part of the agreement between PG&E and Governor
12 Newsom’s office, which now could extend the time of the first payment to December 31, 2020.

13 Additionally, 10% of the total cash consideration – *i.e.*, \$1.35 billion – is deferred without
14 interest until January 15, 2021 (\$650 million) and January 15, 2022 (\$700 million)² and is based
15 on questionable security. Such deferred “cash” is not cash set aside by PG&E and held for the
16 benefit of the fire victims, but rather this “cash” is yet to be earned by PG&E and is subject to
17 various uncertainties and risks related to PG&E’s ability to realize cash benefits from tax
18 attributes as well as any traditional business and credit risks.

19 The other half of the \$13.5 billion in consideration – *i.e.*, \$6.75 billion – is in common
20 stock in the reorganized PG&E, which currently is worth substantially less than the touted \$6.75
21 billion. This stock will be liquidated in order to provide much-needed cash for the fire victims.
22 However, the sale of this stock will be subject to restrictions on timing of the liquidation by
23 PG&E alone, which restrictions have not been disclosed as yet. In fact, PG&E has failed to
24 deliver the stock Registration Rights Agreement, that is an important part of the deal, and which
25 impacts the \$6.75 billion stock value. Moreover, because PG&E is not going to be able to pay
26 dividends for 3 years, the market price of this common stock will be negatively affected because
27

28 ² Because there is no interest on the two deferred payments, they would need to be discounted by
about \$45 million.

UNDENIED FIRE VICTIMS IN ABRAMS
MOTION

1 most institutional investors manage funds that are prohibited from acquiring a stock that pays no
2 dividends.

3 Eric Lowrey, a Certified Restructuring and Insolvency Advisor, has advised the U.S.
4 District Court that the true value of the PG&E stock is only \$4.85 billion, not the \$6.75 billion
5 PG&E and the proponents of that plan assert. And Mr. Lowrey has further advised the Court that
6 there is substantial risk that PG&E will fail to raise the necessary financing to exit bankruptcy on
7 the timeline contemplated, *i.e.* August 2020. See, Declaration of Eric Lowrey, CIRA, In Support
8 of Objection by Certain Fire Victims to Debtors' Motion Pursuant to 11 U.S.C. 105(A) and
9 502(C) to Establish Amount of Fire Victim Claims for all Purposes of the Chapter 11, I re PG&E
10 Corporation, Civil Case No. 19-05257 (JD), Doc. No. 307 (04/03/20), a copy of which is attached
11 hereto as Exhibit A. Mr. Lowrey correctly points out that among the subrogation claimants,
12 unsecured noteholder claimants, and tort victims, everyone receives cash except the victims as
13 shown below:hereto as Exhibit A. Mr. Lowrey correctly points out that among the subrogation
14 claimants, unsecured noteholder claimants, and tort victims, everyone receives cash except the
15 victims as shown on the next page.

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JOINDER OF CERTAIN FIRE VICTIMS IN ABRAMS
MOTION

- 4 -

USBC/NDCA NO. 19-30088 (DM)

Individual Fire Victims the Only Claimant Group to Receive Deferred Cash & Equity

While every other claimant group is to receive 100% cash or secured debt, 60% of the consideration to be transferred to the Victim Trust is exposed to the risk of diminution of value prior to receipt

\$Millions

CLAIMANT GROUPS	TREATMENT OF CLAIMS			TOTAL
	Cash / New Debt	Deferred Cash	Equity	
Debtor-In-Possession Financing	2,000	0	0	2,000
Trade Claims and Other Costs	2,300	0	0	2,300
Prepetition Debt & Accrued Interest	23,450	0	0	23,450
Subrogated Wildfire Liability Claims	11,000	0	0	11,000
Public Entities Wildfire Liability Claims	1,000	0	0	1,000
Individual Fire Victim Liability Claims	5,400	1,350	6,750	13,500
				\$53,250

- Individual victims are the only claimants to receive at-risk deferred cash and/or equity
- The \$1.35 billion of deferred cash and the Fire Victim Equity are exposed to significant risks
 - Fire Victim Equity to be contributed to the Victim Trust currently estimated to be worth approximately \$4.85 billion, materially less than \$6.75 billion, and it could decline further
 - Significant risk of negative impacts due to current economic downturn, including the potential for the Debtors' earnings forecast to be reduced and reduced liquidity due to customer non-payment
 - Cash tax benefits needed to fund \$1.35 billion of deferred cash payments may not be realized
 - Potential future wildfire liability claims made against PG&E would be senior to Victim Equity

Source: Disclosure Statement for Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization.

1) Based on uses of \$59.0 billion in PG&E POR, including \$1.35 billion in deferred cash for the Victim Trust. Not shown is the \$5.0 billion wildfire fund contribution and \$0.75 billion of B/S cash.
 2) Comprised of \$13.875 billion in cash and \$9.575 billion in new secured debt. The \$9.575 billion of new, secured debt to be senior in priority to deferred cash and equity yet to be contributed to Victim Trust upon PG&E's exit from bankruptcy. Secured debt will also be senior in priority to any future wildfire liability claims filed against PG&E (deferred cash and equity will not be).

It is woefully apparent that this PG&E "new deal" is a bad deal for fire victims, especially when one considers that all other creditors, along with Equity and the Noteholders, are getting all cash payments and stand to make billions of dollars upon PG&E's exit from this Chapter 11 proceeding. The only group of creditors who are at risk of getting less than they deserve are the fire victims – the very individuals who suffered the most from the PG&E-caused wide fires. The vast majority of fire victims, who were not members of any committee and therefore whose voices were not heard, but to whom the TCC nevertheless has a fiduciary obligation to maximize their recoveries, did not agree to take less than the \$13.5 billion they were promised they would receive. That is why three members of the TCC have resigned because they cannot support the proposed settlement in such circumstances.

Meanwhile, the proponents of the PG&E settlement are broadcasting to fire victims that the only way to get paid promptly is to vote "Yes" on the PG&E plan. But that representation is

1 inaccurate and misleading, because it will be years before any payments are made from the Trust
2 to the fire victims. Indeed, the statements by the proponents of the PG&E plan that a “No” vote
3 will result in years of chaos and litigation and the possible breakup of the company is not correct
4 because there is a viable back-up plan proposed by the Customer-Owned Utility (“C-OU”) group,
5 which would provide the fire victims with \$13.5 billion all cash, meet the June 30, 2020 deadline
6 for joining the wildfire insurance fund, and be paid into the Fire Victims Trust by September 30,
7 2020. See Declaration of Francis O. Scarpulla In Support of Objection to Debtors’ Motion, Case
8 No.: 19-cv-05257-JD, Doc. No.: 306-1, attached hereto as Exhibit B.

9 III

10 HOW DID THIS HAPPEN TO FIRE VICTIMS?

11 It appears to an independent observer that a number of mistakes were made which
12 materially affected the fire victims’ settlement. Initially, it appears that the subrogation claimants
13 (many of whom are hedge funds who purchased such insurance subrogation claims at thirty cents
14 on the dollar) abandoned any meaningful negotiations with the TCC and obtained an \$11 billion
15 all-cash deal with the PG&E equity group (also led by a group of hedge funds which would make
16 billions of dollars upon exit from bankruptcy). Once the subrogation claimants joined PG&E any
17 negotiating strength of the TCC was greatly weakened.

18 Another mistake was not to engage with the noteholders (possessing trillions of dollars in
19 assets) who apparently were ready, willing and able to offer an all-cash \$13.5 billion deal for the
20 fire victims. While it is common knowledge that a mediation session took place, one wonders
21 why the noteholders’ settlement proposal was not accepted, which caused them to join with
22 equity and effectively eliminate all competition for the fire victims’ damages amount.³ Once that
23 happened, all fire victims were at the mercy of PG&E and Equity, except that the TCC had an
24 automatic RSA withdrawal provision if Governor Newsom rejected PG&E’s proposal, as he
25 eventually did. However, rather than terminate the deal, the TCC agreed to revise the RSA by
26 deleting such automatic withdrawal right. After that revision, the TCC could escape from the

27 ³ When two competitors enter into a contract to the injury of a party, that may be deemed to be a
28 violation of Section 1 of the Sherman Act for which the combining parties can be liable for treble
damages.
ORDER OF CERTAIN FIRE VICTIMS IN ABRAMS
MOTION

1 RSA only if its fiduciary obligations required it to withdraw from the PG&E RSA.

2 Now that it is obvious to anyone examining the PG&E “deal” objectively that it is not in
3 the interests of fire victims to approve it, the TCC still has not utilized the fiduciary-out provision
4 of the RSA.

5 We do not propose that this Court scrap the PG&E plan altogether, but rather that it
6 consider how to resolve all of the outstanding issues so that the fire victims receive \$13.5 billion
7 as they were promised.

8 One way is for the subrogation claimants, who currently are to receive \$11 billion in cash,
9 to contribute \$3.7 billion in cash to the fire victims’ Trust and take \$3.7 billion in stock. Thus,
10 the fire victims would receive \$10.45 billion in cash and \$3.05 billion in stock.

11 Then, there are the noteholders who originally offered the fire victims \$13.5 billion in
12 cash. These same noteholders could contribute \$3.05 billion in cash to the fire victims and take
13 for themselves an additional \$3.05 billion in stock, so that the victims would receive \$13.5 billion
14 in cash.

15 Alternatively, or in addition, the noteholders could agree to convert some or all of their
16 debt to equity thereby reducing the debt-load on PG&E and presumably increasing the value of
17 the stock post-bankruptcy.

18 Additionally, there is now a back-up proposal from the C-OU group which would provide
19 the fire victims with an all-cash payment of \$13.5 billion and permit PG&E to meet the June 30,
20 2020 wildfire insurance fund requirements of AB1054, with payment of the all-cash \$13.5 billion
21 into the Fire Victims Trust by September 30, 2020. See Declaration of Francis O. Scarpulla In
22 Support of Objection to Debtors’ Motion, Case No.: 19-cv-05257-JD, Doc. No.: 306-1.
23 However, the fire victims have not been permitted to even consider that proposal.

24 While it is not known exactly why a group of 13 plaintiffs firms, who allege they
25 represent thousands of fire-victim claims, keep advocating for the obviously-flawed PG&E
26 settlement, one could guess it is because certain law firms may reap hundreds of millions in fees
27 while avoiding a trial of the Tubbs preference cases (which the TCC asked be sent to the San
28 Francisco Superior Court for a jury trial when Cal Fire did not find PG&E at fault for the Tubbs

1 Fire). After those Tubbs preference cases were before a state-court judge for trials, PG&E and
2 certain lawyers who represented Tubbs preference clients, and who also had clients on the TCC,
3 entered into settlement agreements which are to be paid from the Trust – unlike the unliquidated
4 fire victims’ claims which may take years to process and fully pay. The amount of those
5 settlements, however, are secret. As these settlement amounts are to be paid from the Trust,
6 PG&E could care less how much the Tubbs plaintiffs were paid in settlements, which are now
7 liquidated claims and can be paid immediately from the Trust once it is funded. The attorneys can
8 be expected to seek fees for those settlements. Because of the settlement with PG&E, the Tubbs
9 claimants also were able to avoid any damages estimation trial, were the District Court Judge was
10 to rule on the total damages caused by PG&E. As only PG&E could settle the Tubbs preference
11 lawsuits and avoid an estimation trial, the Tubbs claimants had no incentive to pursue other non-
12 PG&E settlements, even though at least two of them – the noteholders and, more recently, the
13 C-OU, both of whom offered fire victims \$13.5 billion all cash.

14 The proponents of the PG&E plan are inundating their clients as well as all fire victims,
15 whether represented by them or not, with misinformation. These proponents claim that rejecting
16 the PG&E plan will not lead to a better deal because PG&E cannot pay out more to the fire
17 victims and emerge from bankruptcy as a viable utility. This is simply not true, because the
18 claims of individual wildfire victims are senior in priority to pre-petition equity claims, which
19 means fire victims will get paid in full before equity. However, as the plan now stands, rather
20 than equity getting paid last – if at all – it will reap about \$5.8 billion under the current plan of
21 reorganization. So, rather than fight for the fire victims, the lawyers who were supposed to be
22 protecting fire victims left about \$5.8 billion on the table.

23 IV

24 CONCLUSION

25 We respectfully submit that this Court should not confirm the PG&E plan, but rather now
26 order all interested parties to a mediation beginning as soon as possible with the two mediators
27 who almost had this complex litigation case settled – The Honorable Daniel Weinstein (Ret.) and
28 Robert Meyer – and allow the parties one week to resolve all outstanding issues and achieve a

1 \$13.5 billion all cash fund for the fire victims and a plan that can be confirmed.

2 Dated: April 24, 2020

By: /s/ Quentin L. Kopp
Quentin L. Kopp

3
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24 Attorneys for GER HOSPITALITY, LLC and
25 ADOLFO VERONESE FAMILY

1
2 **CERTIFICATE OF SERVICE**
3

4 I, Quentin L. Kopp, declare as follows:

5 I am a citizen of the United States and over the age of eighteen (18) years and not a party
6 to the within action. My business address is 456 Montgomery Street, 17th Floor, San Francisco,
7 CA 94014.

8 On April 24, 2020, I served document(s) described as:

9 **JOINDER OF CERTAIN FIRE VICTIMS IN ABRAMS**

10 **MOTION**

11 on the interested parties in this action as follows:

12 ☐ BY MAIL: Service was accomplished by placing the document(s) listed above in a sealed
13 envelope with postage thereon fully prepaid, in the United States mail at San Francisco,
14 addressed as set forth above.

15 ☒ BY E-MAIL/NEF: Service was accomplished through the Notice of Electronic Filing
16 ("NEF") for all parties and counsel who are registered ECF Users and those identified
17 below:

18 I declare under penalty of perjury under the laws of the United States of America that the
19 above is true and correct. This declaration was executed on April 24, 2020 at San Francisco,
20 California.

21 /s/ Quentin L. Kopp
22 Quentin L. Kopp
23
24
25
26
27
28

ATTACHMENT A

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Co-Counsel for Creditors
KAREN ROBERDS and ANITA FREEMAN,
for themselves and on behalf of all others similarly,
situated, WILLIAM N. STEEL, for himself and on
behalf of all others similarly situated;
WILLIAM O'BRIEN, MING O'BRIEN,
FUGUAN O'BRIEN; MICHAEL HEINSTEIN,
KYE HEINSTEIN; CLINTON REILLY,
Class Claimant GER HOSPITALITY, LLC,
and RICHARD CARPENETI

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION

-and-

PACIFIC GAS AND ELECTRIC COMPANY,

Debtors.

Civil Case No. 19-05257 (JD)

Bankruptcy Case No. 19-30088 (DM)

**DECLARATION OF ERIC LOWREY,
CIRA IN SUPPORT OF OBJECTION BY
CERTAIN FIRE VICTIMS TO
DEBTORS' MOTION PURSUANT TO 11
U.S.C. 105(A) AND 502(C) TO
ESTABLISH AMOUNT OF FIRE
VICTIM CLAIMS FOR ALL PURPOSES
OF THE CHAPTER 11 CASES**

Date: May 21, 2020

Time: 10:00 a.m.

Ctrm.: 11

Judge: Hon. James Donato

1 I, ERIC LOWREY, CIRA, declare as follows:

2 1. I am a restructuring professional with over 15 years of financial and strategic
3 advisory experience, particularly to companies in the power and utilities industry, and am a
4 Certified Restructuring and Insolvency Advisor (CIRA) by the Association of Insolvency &
5 Restructuring Advisors. I have led the day-to-day work on engagements for Jefferies Financial
6 Group, Miller Buckfire & Co., PwC Advisory Services, and New Harbor Incorporated and been a
7 member of the investment banking groups at Deutsche Bank and Barclays. I have advised
8 companies, creditors and other stakeholders on the negotiation and execution of in-court and out-
9 of-court restructurings and issues related to capital structure, financing, liquidity, and valuation,
10 and advised distressed companies, official creditor and equity committees, and investors on
11 restructurings in the consumer, energy, healthcare, and metals and mining industries. Each
12 restructuring engagement on which I advised involved the analysis of detailed financial data and
13 projections, which I conducted and/or oversaw. I have a BA in Economics from Boston College
14 (*Magna Cum Laude*) and an MBA from Columbia University.

15 2. This Declaration pertains to the Aggregate Fire Victim Consideration to be used to
16 fund the Fire Victim Trust under the Plan, as defined below, for the benefit of all of the individual
17 Fire Victim Claimants and is offered in support of the Objection by Certain Fire Victims to
18 Debtors' Motion Pursuant to 11 U.S.C. 105(A) And 502(C) to Establish Amount of Fire Victim
19 Claims for All Purposes of the Chapter 11 Case.

20 3. I was asked to review and analyze the Aggregate Fire Victim Consideration to be
21 used to fund the Fire Victim Trust as described in the Disclosure Statement for the Debtors' and
22 Shareholder Proponents' Joint Chapter 11 Plan of Reorganization dated March 17, 2020 (the
23 "Plan"). Pursuant to the Plan filed, the consideration to be used to fund the Fire Victim Trust
24 includes \$13.5 billion⁽¹⁾, consisting of \$5.4 billion in cash, \$1.35 billion in deferred cash, and \$6.75
25 billion in common stock of Reorganized PG&E Corp. (the "Fire Victim Equity").

26 4. I have reviewed numerous documents which constitute or relate to the above-
27 mentioned Plan of Reorganization and the Aggregate Fire Victim Consideration thereunder.

Documents reviewed include, but are not limited to:

- The Disclosure Statement for the Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization
- The Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization
- The Supplement to the Disclosure Statement for the Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization (the "Supplement")
- The Tort Claimants Restructuring Support Agreement (the "Tort Claimant RSA")
- Various news and research reports relating to PG&E Corporation, its bankruptcy proceedings, and the power and utilities industry

5. As more fully set out in the paragraphs below, my analysis and conclusions are (1)

the value of the consideration to be transferred to the Fire Victim Trust is now substantially less than \$13.5 billion⁽¹⁾; and (2) the current unprecedented economic conditions put the value and timing of the consideration to be transferred to the Fire Victim Trust at risk of reduction and/or payment delay. Specifically,

- The funding for the five, primary creditor/claimant groups other than the individual Fire Victim Claimants is 100% cash (Please see **Exhibit A**, which I prepared and lists the respective claimant groups and their settlement amounts). The consideration⁽¹⁾ to be transferred to the Victim Trust to satisfy individual Fire Victim Claims is 40% cash, 10% deferred cash and 50% new common stock in the Reorganized PG&E Corp., which exposes the Fire Victim Claimants to significant risk of value reduction prior to receipt.
- The estimated value of the Victim Equity to be transferred to the Victim Trust has fluctuated downward since the Tort Claimants RSA was entered into in December 2019 (See **Exhibit B**, which I prepared and sets out a summary of the change in value). The amount of \$6.75 billion as described in the TCC Claimants RSA is a component in a formula used to calculate the percentage of the common stock in Reorganized PG&E Corporation's equity to be contributed to the Fire Victim Trust, subject to a minimum of

20.9%. This formula contemplates valuing the common stock of Reorganized PG&E as a function of the Normalized Net Income for 2021, as defined in the Plan, multiplied by 14.9. Using the Debtors forecast of \$2.04 billion for 2021 non-GAAP Core Earnings included in the Debtors' updated financial projections included (the "Supplement") would imply an equity value of \$30.4 billion of which \$6.75 billion would represent 22.2%. To estimate what this may be worth one could use Edison International (NYSE: EIX) as a proxy for how the equity market may value PG&E's common equity.

- Currently, EIX trades at 10.7 multiplied by the consensus 2021 earnings estimates for EIX⁽²⁾. Multiplying the 2021 non-GAAP Core Earnings of \$2.04 billion by the same multiple of 10.7 would imply an equity market capitalization of approximately \$21.8 billion for Reorganized PG&E, implying a value of approximately \$4.85 billion for the Victim Equity to be contributed to the Fire Victim Trust. However, this value is still at significant risk of further decline in the wake of the COVID-19 pandemic as utility companies face the potential to underperform forecasts in the near-term and other potential financial challenges as a result, such as reduced liquidity due to "no disconnect" orders and/or agreements.
- Additionally, there are a number of PG&E-specific issues that may cause the market to value Reorganized PG&E at lower multiple than the one at which Edison International trades. One of the most notable of these issues is that PG&E has agreed not to pay dividends, an attribute typically sought by utility investors, for a minimum of three years.
- The \$1.35 billion of deferred cash payments to the Fire Victim Trust (to be funded through an as of yet uncertain securitization and/or by the realization of cash tax benefits resulting from tax attributes of the Debtors) is exposed to several risks. Those risks include the potential for a change of control as part of the Debtors' equity financing, which could limit the company's ability to use its NOLs to offset future taxes; the failure of Reorganized PG&E to generate earnings sufficient to realize the requisite cash tax benefits necessary to fund the deferred cash payments; and general business and credit risk due to among other things potential future wildfire liability claims that could be disallowed or not covered in a

timely manner by the Go-Forward Wildfire Fund;

6. The timing of contributions to the Fire Victim Trust is also uncertain. Expectations for the timing of the initial cash and equity contributions have been based on the Debtors' Plan of Reorganization becoming effective on or before August 29, 2020. However, under the recently announced as Case Resolution Contingency Process the date by which the Debtors emerge from bankruptcy could be as late as December 31, 2020.

7. PG&E's ability to successfully finance its exit from bankruptcy and fund the cash transfer to the Fire Victim Trust was not 100% certain prior to the recent health and economic crises. With the recent economic downturn and disruption in the financial markets caused by the COVID-19 pandemic the risk that the Debtors will fail to raise the financing necessary to exit bankruptcy on the timeline contemplated at the time the TCC Claimants RSA was entered into has increased substantially.

8. Should PG&E fail to emerge from bankruptcy by December 31, 2020 and be required to initiate a sale process for the company, as agreed to and outlined in the Case Resolution Contingency Process, the resulting sale could further delay and potentially negatively impact the funding of the Fire Victim Trust. The potential for such a scenario creates additional risk and uncertainty for the payments agreed under the TCC Claimants RSA as there is no guarantee that a sale process would result in sale proceeds sufficient to meet the Debtors' commitments under the TCC Claimant RSA.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 3, 2020 at New York, New York.

/s/ *Eric Lowrey*

ERIC LOWREY

Pursuant to Local Rule 5-1(i)(3), I attest that concurrence in filing this document has been obtained from the signatory, Eric Lowrey.

/s/ Jeremiah F. Hallisey

Jeremiah F. Hallisey

(1) Exclusive of certain rights and causes of action to be transferred to Victim Trust under the Plan

5

DECLARATION OF ERIC LOWREY, CIRA IN SUPPORT OF OBJECTION BY CERTAIN FIRE VICTIMS TO DEBTORS' MOTION PURSUANT TO 11 U.S.C. 105(A) AND 502(C) TO ESTABLISH AMOUNT OF FIRE VICTIM CLAIMS FOR ALL PURPOSES OF THE CHAPTER 11 CASES

1 (2) The 10.7 multiple of earnings for Edison International (NYSE: EIX) is based on the consensus
2 2021 earnings estimates and closing stock price for EIX as of April 3, 2020 per CapIQ.
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EXHIBIT A TO
DECLARATION OF ERIC LOWREY, CIRA IN SUPPORT OF OBJECTION BY
CERTAIN FIRE VICTIMS TO DEBTORS' MOTION PURSUANT TO 11 U.S.C. 105(A)
AND 502(C) TO ESTABLISH AMOUNT OF FIRE VICTIM CLAIMS FOR ALL
PURPOSES OF THE CHAPTER 11 CASES

Individual Fire Victims the Only Claimant Group to Receive Deferred Cash & Equity

While every other claimant group is to receive 100% cash or secured debt, 60% of the consideration to be transferred to the Victim Trust is exposed to the risk of diminution of value prior to receipt

\$Millions

CLAIMANT GROUPS	TREATMENT OF CLAIMS			TOTAL
	Cash / New Debt	Deferred Cash	Equity	
Debtor-In-Possession Financing	2,000	0	0	2,000
Trade Claims and Other Costs	2,300	0	0	2,300
Prepetition Debt & Accrued Interest	23,450	0	0	23,450
Subrogated Wildfire Liability Claims	11,000	0	0	11,000
Public Entities Wildfire Liability Claims	1,000	0	0	1,000
Individual Fire Victim Liability Claims	5,400	1,350	6,750	13,500
				\$53,250

- Individual victims are the only claimants to receive at-risk deferred cash and/or equity
- The \$1.35 billion of deferred cash and the Fire Victim Equity are exposed to significant risks
 - Fire Victim Equity to be contributed to the Victim Trust currently estimated to be worth approximately \$4.85 billion, materially less than \$6.75 billion, and it could decline further
 - Significant risk of negative impacts due to current economic downturn, including the potential for the Debtors' earnings forecast to be reduced and reduced liquidity due to customer non-payment
 - Cash tax benefits needed to fund \$1.35 billion of deferred cash payments may not be realized
 - Potential future wildfire liability claims made against PG&E would be senior to Victim Equity

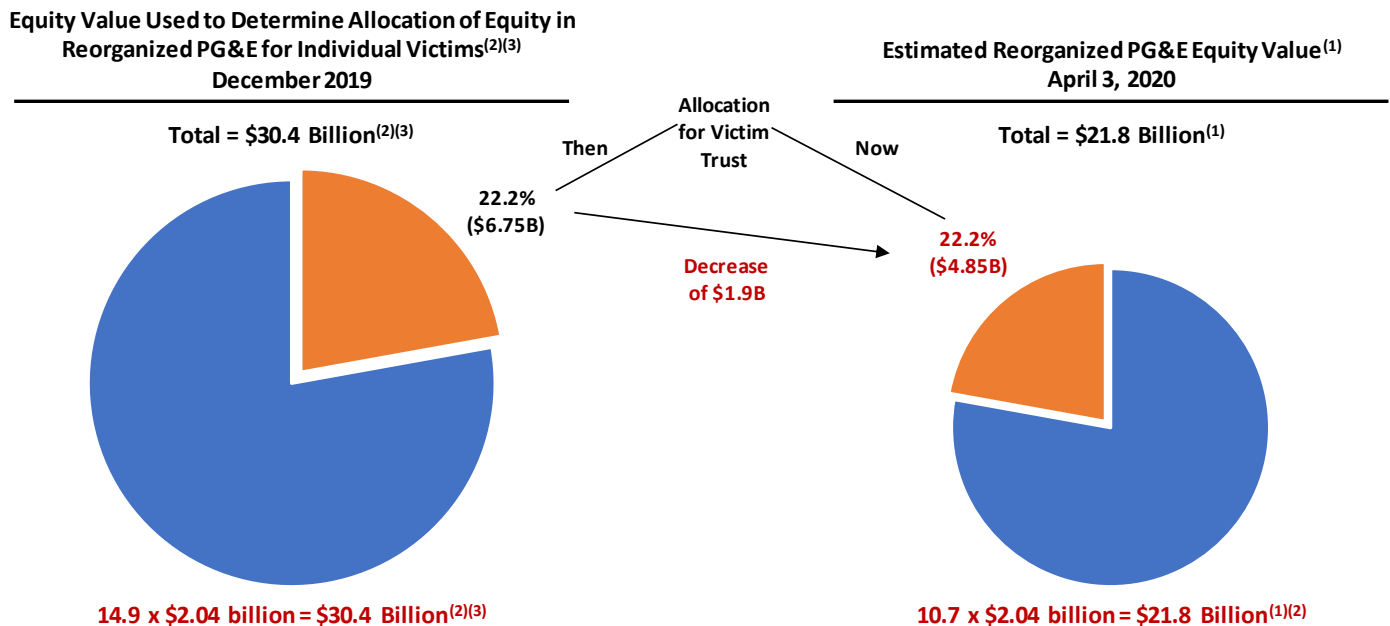
Source: Disclosure Statement for Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization.

- 1) Based on uses of \$59.0 billion in PG&E POR, including \$1.35 billion in deferred cash for the Victim Trust. Not shown is the \$5.0 billion wildfire fund contribution and \$0.75 billion of B/S cash.
- 2) Comprised of \$13.875 billion in cash and \$9.575 billion in new secured debt. The \$9.575 billion of new, secured debt to be senior in priority to deferred cash and equity yet to be contributed to Victim Trust upon PG&E's exit from bankruptcy. Secured debt will also be senior in priority to any future wildfire liability claims filed against PG&E (deferred cash and equity will not be).

EXHIBIT B TO
DECLARATION OF ERIC LOWREY, CIRA IN SUPPORT OF OBJECTION BY
CERTAIN FIRE VICTIMS TO DEBTORS' MOTION PURSUANT TO 11 U.S.C. 105(A)
AND 502(C) TO ESTABLISH AMOUNT OF FIRE VICTIM CLAIMS FOR ALL
PURPOSES OF THE CHAPTER 11 CASES

Value of Equity Allocated to Individual Victims Estimated to be \$4.85B, Not \$6.75B⁽¹⁾

As of early April 2020, the value of the equity in Reorganized PG&E Corp. to be contributed to the Victim Trust estimated at only \$4.85 billion, 28% (or \$1.9 billion) less than the headline amount of \$6.75 billion



1) Value of Fire Victim Equity estimated using Edison International (NYSE: EIX) as a proxy, which trades at a multiple of 10.7x consensus 2021 earnings estimates as of April 3, 2020 per CapIQ.

2) Based on 2021 forecasted earnings of \$2.04 billion per the Disclosure Statement for Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization.

3) Based on 2021 forecasted earnings multiplied by 14.9 per the Disclosure Statement for Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization.

ATTACHMENT B

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Co-Counsel for Creditors
KAREN ROBERDS and ANITA FREEMAN,
for themselves and on behalf of all others similarly,
situated
[additional creditors and counsel
listed on signature page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION

-and-

PACIFIC GAS AND ELECTRIC
COMPANY,

Debtors.

Case No. 19-cv-05257-JD

Bankruptcy Case No.: 19-30088-DM

**OBJECTION BY CERTAIN FIRE VICTIMS
TO DEBTORS' MOTION PURSUANT TO 11
U.S.C. 105(a) AND 502(c) TO ESTABLISH
AMOUNT OF FIRE VICTIM CLAIMS FOR
ALL PURPOSES OF THE CHAPTER 11
CASE; JOINDER IN RESPONSE OF TCC**

Date: May 21, 2020

Time: 10:00 a.m.

Ctrm: 11

Judge: Hon. James Donato

I

INTRODUCTION

The Debtors, PG&E Corporation and Pacific Gas & Electric ("Debtors" or "PG&E") have moved this Court for an order establishing by estimation the total amount of all fire victims' claims for all purposes in the Debtors' Chapter 11 bankruptcy cases. In essence, the Debtors propose funding a trust for fire victims with \$6.75 billion in cash and PG&E stock allegedly valued at \$6.75

1 billion and the assignment of certain rights and causes of action. The Debtors define “fire victim”
 2 as any tort claimant affected by any PG&E-caused wildfires in 2015, 2016 (Ghost Ship), 2017 and
 3 2018 anywhere in Northern California, including not only individuals who lost loved-ones, or real
 4 and personal property, but also business entities and public entities.

5 For two major reasons, this group of individual fire victims opposes that motion and joins in
 6 the Response of the Official Committee of Tort Claimants (“TCC”) filed herein at ECR No. 295
 7 (Apr. 2, 2020). First, Debtors’ current Plan¹ classifies claims of creditors with substantially similar
 8 legal claims against the Debtors, i.e., claims of fire victims in their own right and claims of their
 9 insurers for losses paid due to fires, in different classes with profoundly different treatment, and
 10 therefore cannot be confirmed under 11 U.S.C. §§ 1129(a)(1) and 1122. Whereas fire victims and
 11 their insurers each have legal claims for damages, the Plan pays the insurers in cash whereas the
 12 fire victims trust, unlike all other creditors, must accept the highly speculative risk of holding
 13 PG&E stock as half of their consideration, instead of cash.

14 Second, this unequal treatment is exacerbated by the massive changes in circumstances,
 15 including the current economic downturn caused by COVID-19 and the recent criminal plea
 16 entered by the Debtors for involuntary manslaughter in connection with the Camp Fire, raise
 17 serious questions about the value of the PG&E stock proposed for fire victims in the Plan.
 18 Therefore, any estimation of the capped amount of fire victims’ claims must take into account that
 19 the supposedly absolute value of \$13.5 billion (to be paid half in cash and half in stock) is at least
 20 partly illusory and not worth that amount anymore.

21 II

22 ARGUMENT

23 A. All Similarly-Situated Creditors Must be Treated Equally

24 Under the provisions of 11 U.S.C. §§ 1129(a)(1), (a)(7), and 1122, all similar claims of
 25 creditors must be treated equally or the plan cannot be confirmed. Here, the fire victims (both
 26 those individuals and entities that suffered damages from the 2015, 2017 and 2018 wildfires, as
 27 _____

28 ¹ *Debtors’ Amended Plan of Reorganization*, Bankr. Dkt. No. 6320 (Mar. 16, 2020).

well as the public entities and subrogation insurance entities) are all similarly situated in that their losses were caused by fires attributable to the Debtors' equipment or operations. However, only the individual fire victims, who lost loved-ones, homes, personal property, businesses, and other damages, are at risk of receiving less than they were guaranteed under the proposed settlement agreement with the Debtors. These fire victims are required to accept half of the \$13.5 billion in cash and half in stock in the new company exiting bankruptcy. On the other hand, the subrogation insurance companies are receiving an all-cash payment amounting to \$11 billion. The current public entity settlements likewise are all cash. Only the individual fire victims are treated differently and unfairly. Thus, this motion to finally fix the amount of the fire victims' claim should not be granted unless and until this gross disparity is remedied and the fire victims are guaranteed that they will actually receive the full value of the proposed estimated \$13.5 billion as the Debtors promised.

B. Changed Circumstances Dictate Denial of the Motion

1. The Economic Crash

The now-worldwide onset of the Coronavirus has caused a massive economic crash, causing the U.S. economy to slide into what appears to be a deep recession, with all closely-watched averages down to bear-market levels. Additionally, there is an historic number of Americans filing for unemployment benefits -- over 6 million during the last week of March, 2020. In short, most economic experts assert that the U.S. is in this deep economic recession for a long period of time. None of these factors existed when the Debtors proposed their half-cash/half-stock \$13.5 billion settlement with the fire victims. Based on the current economic circumstances, the \$13.5 billion is no longer worth \$13.5 billion, a risk that fire victims should not shoulder on their own, when other creditors with the same legal claims receive all cash.

A substantial portion of the \$13.5 billion -- \$6.75 billion is to be paid in stock in the new company exiting bankruptcy. But that stock is no longer worth \$6.75 billion, but only \$4.85 billion -- *i.e.*, about \$1.9 billion less than promised. *See* accompanying Declaration of Eric Lowrey in support of this objection ("Lowrey Decl.") para. 5, second bullet point. This decline in stock value could further deteriorate given several factors: PG&E's ongoing wildfire risks; its weak credit

1 portfolio; the potential for its earnings forecast to be revised downward due to further economic
 2 downturns; and its inability to pay any dividends for a minimum of three years, something that is a
 3 key attribute that potential utility investors look for when deciding whether to purchase stock. *See*
 4 Lowrey Decl., ¶ 5.

5 Not only is there a very real risk that the stock going to the fire victims trust will be worth
 6 less than the promised \$6.75 billion, but the \$6.75 billion cash portion of the fire victims'
 7 settlement may also turn out to be less. The cash portion of the settlement calls for the payment of
 8 \$5.4 billion on the effective date (assuming the Debtors are able to obtain financial commitments to
 9 come up with the capital to make that payment, which at this point is still unclear), with a deferred
 10 payment of \$1.35 billion paid in two installments (\$650 Million on January 15, 2021 and \$700
 11 Million on January 15, 2022), without interest and with questionable security. (*See*, Plan section
 12 1.208). Because the deferred payments do not bear any interest, that amount needs to be
 13 discounted, which results in a deduction of \$45 Million from the \$1.35 billion. Additionally, the
 14 deferred payments means that the new PG&E will have to make it through two fire seasons while,
 15 at the same time, these deferred payments are generated by tax attributes that may never occur
 16 because if there is a mass sale of PG&E stock shortly after exit from bankruptcy, the IRS might
 17 consider that a change of control such that the net operating losses essentially disappear. Lowrey
 18 Decl. ¶ 5, 3rd bullet point. Moreover, upon exit, the new PG&E will have some \$38 billion in debt,
 19 leaving little margin for error if it is to achieve enough money to pay the \$1.35 billion in deferred
 20 payments. Finally, the current economic downturn is very likely to have a material negative impact
 21 on the Debtors' financial forecast over the next 12 to 18 months, which could put a significant
 22 portion of the deferred cash payments at substantial risk to the fire victims. Lowrey Decl. ¶ 7.

23 Therefore, these objecting fire victims respectfully suggest that this Court should not
 24 confirm the \$13.5 billion to the tort claimants unless and until that full amount is certain to get to
 25 those claimants without any deductions whatsoever.

26 2. The Guilty Pleas

27 Recently, the Debtors pleaded guilty to 84 counts of felony involuntary manslaughter in
 28 violation of Cal. Penal Code § 192(b) and one count of unlawfully causing a fire in violation of Cal.

1 Penal Code § 452 bringing a fine of \$4 Million² (which the Debtors initially stated was to paid out of the
 2 fire victims' trust, but relented when faced with overwhelming objections from fire victims). However,
 3 because the Debtors are convicted felons for causing the Camp Fire, they are now subject to punitive
 4 damages from those fire victims whose losses are attributable to that fire. When the Debtors proposed the
 5 \$13.5 billion settlement there was no real threat of punitive damages, which there is now, and which makes
 6 the \$13.5 billion inadequate to pay all fire victims' claims, as well as any substantial punitive damages to the
 7 Camp Fire victims. Therefore, the motion to establish the \$13.5 billion should be denied unless and until the
 8 Debtors prove to this Court that the fire victims will receive consideration actually worth \$13.5 billion, plus
 9 any additional amount to satisfy any punitive damages claims by the Camp Fire victims.

10 III

11 RESOLUTION OF THE PROBLEM

12 Providing \$13.5 billion for the fire victims is achievable without dismantling the entire
 13 settlement with the Debtors. Either the Debtors can amend the settlement to provide for an all-cash
 14 payment to the fire victims on the effective date, or if the Debtors are unable to accomplish that,
 15 they should include a backup plan – *i.e.*, a backstop, if you will – that protects the \$13.5 billion all-
 16 cash amount, and there are at least two groups that can provide that backstop. First there is the
 17 Customer-Owned Utility proposal, which assures that fire victims will receive the \$13.5 billion in
 18 cash upon the effective date. Declaration of Francis .O. Scarpulla in support of this objection
 19 (“Scarpulla Decl.”), Exhibit A, response no. 8. In fact, the Customer-Owned Utility propose the
 20 following, among other provisions: 1) to fully fund the fire victims' trust with \$13.5 billion all cash
 21 on or before September 30, 2020; 2) treat all other creditors exactly the same as in the current
 22 Debtors' agreement, including the \$11 billion cash to the subrogation insurance group; 3) pay the
 23 settling public entities their \$1 billion in cash; and 4) fully comply with all requirements of AB
 24 1054. Scarpulla Decl., Exhibit A.

25
 26
 27 ² Debtors' motion before the Bankruptcy Court to approve the plea agreement, and the plea
 28 agreement are filed at Bankr. Dkt No. 6418 (Mar. 23, 2020).

1 A second potential backstop could be from the Bondholders, who proposed a \$13.5 billion
 2 all cash payment to the fire victims, but who eventually joined the Equity group in the current
 3 proposal. In fact, there could be an amalgamation of both the Customer-Owned Utility group, with
 4 the Bondholders and with the Equity group to resolve this bankruptcy case for the benefit of all
 5 creditors.

6 IV

7 CONCLUSION

8 As the objecting fire victims have pointed out, this Court should not grant the Debtors'
 9 motion without guaranteeing that the fire victims shall receive the full value of the promised
 10 \$13.5 billion payable into their trust fund for future distributions to the claimants. If the Debtors
 11 are not willing to so guarantee that the fire victims will receive the \$13.5 billion, undiluted in any
 12 way, then this Court could order all interested parties to a mediation with the previously-agreed to
 13 mediators, Judge Daniel Weinstein (Ret.) and Robert Mayer, which would end with a unified
 14 agreement on behalf of the fire victims.

15
 16 Dated: April 3, 2020

TRODELLA & LAPPING, LLP

17
 18 By /s/ Richard A. Lapping
 19 Richard A. Lapping

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2 O'BRIEN, MING O'BRIEN, and FUGUAN
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16 Pursuant to Local Rule 5-1(i)(3), I attest that concurrence in filing this document has been
17 obtained from the signatories.

18 /s/ Richard A. Lapping

19 Richard A. Lapping